



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 52**

**[WC Docket No. 18-28, CC Docket No. 95-155; FCC 18-77]**

**Text-Enabled Toll Free Numbers; Toll Free Service Access Codes**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission adopts a Notice of Proposed Rulemaking (NPRM) seeking comment to determine how a toll free subscriber should make clear its authorization to text-enable a toll free number. To ensure that a toll free subscriber has indeed authorized a toll free number to be text-enabled, the NPRM proposes requiring a toll free subscriber to inform its Responsible Organization (RespOrg) of that authorization and for the RespOrg to update the appropriate records in the toll free SMS Database. The NPRM also seeks comment on what other information, in addition to an SMS Database record reflecting that toll free number has been text-enabled, if any, needs to be captured and centrally managed to protect the integrity of the toll free numbering system, and whether such information should be captured in the SMS Database or some other toll free registry. The intended effect of this NPRM is to clarify and ensure that the toll free SMS Database accurately reflects which toll free numbers are text enabled.

**DATES:** Comments are due on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, and reply comments are due on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Written comments on the Paperwork Reduction Act proposed information

collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by both WC Docket No. 18-28, and CC Docket No. 95-155 by any of the following methods:

- Federal Communications Commission's Web Site: <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- Mail: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

- **People with Disabilities:** To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

For detailed instructions for submitting comments and additional information on the rulemaking process, see the SUPPLEMENTARY INFORMATION section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to Nicole Ongele, Federal Communications Commission, via e-mail to [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Wireline Competition Bureau, Competition Policy Division, E. Alex Espinoza, at (202) 418-0849, or [alex.espinoza@fcc.gov](mailto:alex.espinoza@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Nicole Ongele at (202) 418-2991.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 18-28, and CC Docket No. 95-155, adopted June 7, 2018, and released June 12, 2018. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. It is available on the Commission's Web site <https://www.fcc.gov/document/fcc-takes-steps-prevent-fraud-toll-free-texting-0>.

**SYNOPSIS:**

1.     Introduction. We next turn to how a toll free subscriber should make clear its authorization to text-enable a toll free number. To ensure that a toll free subscriber has indeed authorized a toll free number to be text-enabled, we propose to require a toll free subscriber to inform its RespOrg of that authorization and for the RespOrg to update the appropriate records in the toll free SMS Database. This proposal will ensure that there is a single, authoritative registry for what toll free numbers have been text-enabled by their subscribers. We also seek comment on what other information, in addition to an SMS Database record reflecting that the toll free number has been text-enabled, if any, needs to be captured and centrally managed to protect the integrity of the toll free numbering system, and whether such information should be captured in the SMS Database or some other toll free registry.

2.     Toll Free Subscriber Responsibility. Our proposal that a toll free subscriber notify its RespOrg of its authorization to text-enable a toll free number is consistent with our Declaratory Ruling and will protect the integrity of our toll free system, both for traditional voice service and more recent texting services. Moreover, this requirement will ensure that text-enabling information is captured by the RespOrg for inclusion in the SMS Database, enabling the TFNA to protect the integrity of the toll free number system. Whether that information also should be captured in a separate toll free texting registry or registries is discussed below.

3.     RespOrg Responsibilities. We seek to make recording a subscriber's authorization to text-enable a toll free number as simple and efficient as possible to further our policy goal of promoting the innovative texting feature of these numbers, while also protecting the use of toll free numbers for traditional voice service subscribers. Our current rules already establish the role and obligations of a RespOrg to "manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber." We propose

that this duty include the duty to update the SMS Database as to whether a number has been text-enabled, as well as to update the database should the subscriber choose to no longer use its toll free number for texting. Do parties agree with this proposed RespOrg obligation and the accompanying requirement?

4. We believe that requiring RespOrgs to update the SMS Database when a toll free number is text-enabled will help alleviate concerns that unassigned toll free numbers could be text-enabled because the RespOrg, in attempting to update the database, would realize if the toll free number to be text-enabled is reserved by a RespOrg or not. If not, the toll free number may not be text-enabled as clarified in our Declaratory Ruling. Are there other approaches we should consider, such as the approach recommended by CTIA to allow the industry to decide how to implement a toll free subscriber's authorization to text-enable a toll free number? What impact would such an approach have on the existing toll free system? Are there pros and cons to this approach and, if so, what are they? What other issues should we consider with respect to documenting a subscriber's authorization to text-enable a toll free number?

5. Text-Enabling Information to Be Captured. We also seek comment on what other information—beyond the subscriber's authorization to text-enable the toll free number—should be captured and centrally managed to avoid confusion about the status of a toll free number and to prevent potential abuse, such as spoofing or fraud. Should we require inclusion of information such as the business name and address of the subscriber? Should we also require inclusion of a point of contact who can make decisions pertaining to the number? Should information be captured about the messaging provider that text-enabled the toll free number, such as its name and contact information? What about routing information? Does that information need to be captured in a centrally-managed database to ensure that sent text messages are properly routed

and received? Is there any information that should be captured to manage the voice and texting aspects of a toll free number and to ensure that voice services are not interrupted by the text-enabling of the toll free number and vice versa? What other types of information might be necessary to protect the integrity of the toll free system that should be captured in a centrally managed database?

6. Where to Include Text-Enabling Information. Are there reasons the Commission should establish a separate registry solely to enable and manage toll free text messaging, or could all relevant information about a text-enabled number simply be captured in a separate field or fields in the existing SMS Database? What would be the benefits of a separate registry? We note some commenters in the record claim that without a centralized toll free texting registry, “the toll-free voice industry is itself threatened because all toll-free number owners are now at risk by having their security, branding, and customers compromised by this dangerous situation.” Are there reasons these concerns could not be adequately addressed by adding a field to the SMS Database to reflect the text-enabling of a toll free number? Are there legal or administrative issues to including this information in the already established SMS Database? Would there be benefits to having all voice and text-enabled numbers registered in the SMS Database?

7. Alternatively, if parties believe a separate registry is needed, who should have access to such a registry? Should it be limited to RespOrgs, or open to messaging providers or others (and, if so, whom)? Also, should we consider multiple registries or would having a single registry be more efficient for the toll free subscriber to address any issues or concerns raised by text-enabling and thereby more effectively prevent abuse or fraud? Would being able to access a single registry rather than multiple registries be less burdensome to RespOrgs and messaging providers? Would multiple registries cause confusion for entities that text-enable toll free

numbers as to which registry to use? Would these entities need to know all the registries and be required to make sure a text-enabled toll free number is registered with each one? How would the Commission, state commissions, or law enforcement agencies manage a process that could require accessing multiple registries for information on a particular text-enabled toll free number? Would the sum of the costs of multiple registry administrators be higher than the costs incurred by a single registry administrator?

8. Alternatively, are there benefits to a multi-registry system we should consider? CTIA argues that the Commission, “should not assume that the approach to selecting a single vendor of toll free registry services in the context of voice telecommunications services should be extended to messaging.” What are the benefits of a multi-registry system? Do they outweigh the efficiencies of a single registry? We invite interested stakeholders to address these questions.

9. If we determine that a single toll free texting registry is appropriate, should we make, as recommended by some commenters, the TFNA the registrar as part of its overall toll free number administration responsibilities? The TFNA has developed a toll free texting registry—the “TSS Registry”—which is being used by some industry members. Some commenters support its use as the single registry of text-enabled toll free numbers, and maintain that the TFNA is the proper entity to operate the toll free texting registry; it has already been deemed “impartial” by the Commission and is required to make toll free numbers available “on an equitable basis” pursuant to section 251(e)(1) of the Act. Would Somos, the current TFNA, be neutral in its role as operator of the toll free texting registry?

10. On the other hand, some commenters oppose designating the current SMS Database or TSS Registry as the single authorized text-enabled toll free registry. Would such an approach “lock the wireless industry into a monopoly relationship with Somos”? Would

allowing Somos to administer both the SMS Database and a separate toll free texting registry make the system a more likely target for a Denial of Service attack? What other concerns, if any, do commenters have? Are those concerns limited to designating Somos to manage the single text-enabling registry or do they extend to the Commission designating any administrator over a single database?

11. Administration. We seek comment on issues that likely would arise should we determine, based on the record, to require a RespOrg to record a subscriber's authorization to text-enable a toll free number in the SMS Database or to otherwise require such authorization to be recorded in any separately managed toll free texting registry. Initially, if adopted, our proposed rule would require any entity that text-enables a toll free number on behalf of a business or non-profit organization to reflect that number in the SMS Database, and we seek comment on whether such information also should be captured in any separate toll free texting registry. To ensure that we capture all text-enabled toll free numbers in any appropriate database or registry, we propose to apply this same requirement to those numbers that have already been text-enabled. We also propose that in order to effectuate this requirement, entities would be required within six months of the effective date of the new rule to enter into the SMS Database or any toll free texting registry all numbers they had text-enabled. We seek comment on these proposals. What registration process should be employed to enter all these numbers? Is six months sufficient time for the registration process to be completed? Would the benefit of having all text-enabled numbers registered outweigh the burden of the registration process?

12. Commission Role. We seek comment on what role, if any, the Commission should have in choosing a toll free texting registrar or registrars and in overseeing any toll free texting registries. In addition, section 251(e) of the Communications Act requires that the



Commission create or designate one or more impartial entities to administer telecommunications numbering. The neutrality criteria set forth in § 52.12(a)(1) of our rules explains the statutory requirement by adopting a test to establish neutrality. We expect that any entity that administers a toll free texting registry must meet the neutrality requirements of the Act and our implementing rules, just as Somos must meet those requirements in administering the toll free number database. We seek comment on these views.

13. Maintaining Status Quo. Finally, we seek comment on the pros and cons of maintaining the status quo and not mandating that information about toll free numbers that have been text-enabled be captured in either the SMS Database or in a separate toll free text-enabling registry or registries. Should we take the view that toll free texting is a nascent offering which is still evolving, such that the Commission should not get involved in the registry issue at this time? If so, what are the advantages and disadvantages to such an approach? Are there any other potential impacts of our proposals on this emerging feature of toll free service?

14. Legal Authority. As stated above, section 251(e)(1) of the Act gives us “exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States” and provides that numbers must be made “available on an equitable basis.” Under the Commission’s rules implementing that section of the Act, a toll free subscriber reserves a number in the toll free database in order for it to receive calls made to that number. Accordingly, we retain “authority to set policy with respect to all facets of numbering administration in the United States.”

15. In this NPRM, we propose, pursuant to that same authority, that a toll free subscriber must inform its RespOrg of its authorization to text-enable a toll free number and that the RespOrg must update the appropriate records in the SMS Database. We believe these

additional steps will help safeguard the toll free number assignment process in general and the toll free text-enabling process in particular by alleviating confusion about the status of a toll free number, and will also prevent any potential abuse, such as spoofing or fraud. For this reason and those previously discussed in this NPRM, the proposals herein further our statutory mandate to set policy on numbering administration in the United States. We also seek comment herein on a number of additional measures to promote these same goals and that, if adopted, would also rely upon our numbering authority under section 251(e)(1) of the Act. We invite comment on the sources of authority discussed above.

## **I. INITIAL REGULATORY FLEXIBILITY ANALYSIS**

16. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). The Commission requests written public comments on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in the DATES section of the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the Federal Register.

### **A. Need for, and Objectives of, the Proposed Rules**

17. In this NPRM, we propose that a toll free subscriber must inform its RespOrg of its authorization to text-enable a toll free number and that the RespOrg must update the appropriate records in the SMS Database. We believe this proposal will further safeguard the toll free text-enabling process, and fulfill our statutory mandate that numbers be made available

on an equitable basis. We also believe this additional step are necessary to avoid any confusion about the status of a toll free number and to prevent any potential abuse, such as spoofing or fraud. We seek comment by interested stakeholders on this proposed rule.

## **B. Legal Basis**

18. The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), 201(b), and 251(e)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), and 251(e)(1).

## **C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

19. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rule revisions, if adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act. A “small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

20. Small Businesses, Small Organizations, Small Governmental Jurisdictions. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the SBA’s

Office of Advocacy, in general a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States which translates to 28.8 million businesses. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.” U.S. Census Bureau data published in 2012 indicate that there were 89,476 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 88,761 entities may qualify as “small governmental jurisdictions.” Thus, we estimate that most governmental jurisdictions are small.

21. Wired Telecommunications Carriers. The U.S. Census Bureau defines this industry as “establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.” The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. Census data for 2012 show that there were 3,117

firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this size standard, the majority of firms in this industry can be considered small.

22. Local Exchange Carriers (LECs). Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. The Commission therefore estimates that most providers of local exchange carrier service are small entities that may be affected by the rules adopted.

23. Incumbent LECs. Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable NAICS Code category is Wired Telecommunications Carriers as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 3,117 firms operated in that year. Of this total, 3,083 operated with fewer than 1,000 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted. Three hundred and seven (307) Incumbent Local Exchange Carriers reported that they were incumbent local exchange service providers. Of this total, an estimated 1,006 have 1,500 or fewer employees.

24. Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers. Neither the Commission nor the SBA has developed a small business size standard specifically for these

service providers. The appropriate NAICS Code category is Wired Telecommunications Carriers, as defined above. Under that size standard, such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicate that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. Based on this data, the Commission concludes that the majority of Competitive LECS, CAPs, Shared-Tenant Service Providers, and Other Local Service Providers, are small entities. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. Also, 72 carriers have reported that they are Other Local Service Providers. Of this total, 70 have 1,500 or fewer employees. Consequently, based on internally researched FCC data, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities.

25. We have included small incumbent LECs in this present RFA analysis. As noted above, a “small business” under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.” The SBA’s Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

26. Interexchange Carriers (IXCs). Neither the Commission nor the SBA has developed a definition for Interexchange Carriers. The closest NAICS Code category is Wired Telecommunications Carriers as defined above. The applicable size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. U.S. Census data for 2012 indicates that 3,117 firms operated during that year. Of that number, 3,083 operated with fewer than 1,000 employees. According to internally developed Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of this total, an estimated 317 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our proposed rule.

27. Local Resellers. The SBA has developed a small business size standard for the category of Telecommunications Resellers. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, all operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these prepaid calling card providers can be considered small entities.

28. Toll Resellers. The Commission has not developed a definition for Toll Resellers. The closest NAICS Code Category is Telecommunications Resellers. The Telecommunications

Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 show that 1,341 firms provided resale services during that year. Of that number, 1,341 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of these resellers can be considered small entities. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of this total, an estimated 857 have 1,500 or fewer employees. Consequently, the Commission estimates that the majority of toll resellers are small entities.

29. Other Toll Carriers. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable NAICS Code category is for Wired Telecommunications Carriers as defined above. Under the applicable SBA size standard, such a business is small if it has 1,500 or fewer employees. Census data for 2012 shows that there were 3,117 firms that operated that year. Of this total, 3,083 operated with fewer than 1,000 employees. Thus, under this category and the associated small business size standard, the majority of Other Toll Carriers can be considered small. According to internally developed Commission data, 284 companies reported that their



primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the proposed rules, herein adopted.

30. Prepaid Calling Card Providers. The SBA has developed a definition for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's Form 499 Filer Database, 500 companies reported that they were engaged in the provision of prepaid calling cards. The Commission does not have data regarding how many of these 500 companies have 1,500 or fewer employees. Consequently, the Commission estimates that there are 500 or fewer prepaid calling card providers that may be affected by the rules.

31. Wireless Telecommunications Carriers (except Satellite). This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The appropriate size standard under SBA rules is that such a business is small if it has 1,500 or fewer employees. For this industry, U.S. Census data for 2012 show that there were 967 firms that operated for the entire year. Of this total, 955 firms had employment of 999 or fewer employees and 12 had employment of 1000 employees or more. Thus under this category and the associated size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities.

32. The Commission's own data—available in its Universal Licensing System—

indicate that, as of October 25, 2016, there are 280 Cellular licensees that will be affected by our actions today. The Commission does not know how many of these licensees are small, as the Commission does not collect that information for these types of entities. Similarly, according to internally developed Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service, and Specialized Mobile Radio Telephony services. Of this total, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

33. Wireless Communications Services. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined “small business” for the wireless communications services (WCS) auction as an entity with average gross revenues of \$40 million for each of the three preceding years, and a “very small business” as an entity with average gross revenues of \$15 million for each of the three preceding years. The SBA has approved these definitions.

34. Wireless Telephony. Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

35. Cable and Other Subscription Programming. This industry comprises

establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis. The broadcast programming is typically narrowcast in nature (e.g. limited format, such as news, sports, education, or youth-oriented). These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers. The SBA has established a size standard for this industry stating that a business in this industry is small if it has 1,500 or fewer employees. The 2012 Economic Census indicates that 367 firms were operational for that entire year. Of this total, 357 operated with less than 1,000 employees. Accordingly we conclude that a substantial majority of firms in this industry are small under the applicable SBA size standard.

36. Cable Companies and Systems (Rate Regulation). The Commission has developed its own small business size standards for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that there are currently 4,600 active cable systems in the United States. Of this total, all but eleven cable operators nationwide are small under the 400,000-subscriber size standard. In addition, under the Commission's rate regulation rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,600 cable systems nationwide. Of this total, 3,900 cable systems have fewer than 15,000 subscribers, and 700 systems have 15,000 or more subscribers, based on the same records. Thus, under this standard as well, we estimate that most cable systems are small entities.

37. Cable System Operators (Telecom Act Standard). The Communications Act also

contains a size standard for small cable system operators, which is “a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000.” There are approximately 52,403,705 cable video subscribers in the United States today. Accordingly, an operator serving fewer than 524,037 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate. Based on available data, we find that all but nine incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

38. All Other Telecommunications. The “All Other Telecommunications” industry is comprised of establishments that are primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry. The SBA has developed a small business size standard for “All Other

Telecommunications,” which consists of all such firms with gross annual receipts of \$32.5 million or less. For this category, U.S. Census data for 2012 show that there were 1,442 firms that operated for the entire year. Of these firms, a total of 1,400 had gross annual receipts of less than \$25 million. Thus a majority of “All Other Telecommunications” firms potentially affected by our action can be considered small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

39. The NPRM proposes and seeks comment on a rule change that will affect toll free text-enablement. In particular, we propose a revised definition for the Service Management System Database § 52.101(d). The NPRM seeks comment on this proposal.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

40. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.

41. In this NPRM, we propose that a toll free subscriber must inform its RespOrg of its authorization to text-enable a toll free number and that the RespOrg must update the

appropriate records in the SMS Database. We believe this proposal will further safeguard the toll free text-enabling process, and fulfill our statutory mandate that numbers be made available on an equitable basis. The NPRM also seeks comment on administrative issues to implement the proposed registry that would not be overly burdensome on RespOrgs and messaging providers. For example, we seek comment on whether toll free texting information should be included in the SMS Database or if there should be a single toll free texting registry, as opposed to multiple registries, to limit burden on RespOrgs and messaging providers some of which may be small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

42. None.

**II. PROCEDURAL MATTERS**

**A. Comment Filing Procedures**

43. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated in the DATES section of this document in Dockets WC 17-192, and CC 95-155. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of

this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

44. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation

within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

## **B. Initial Regulatory Flexibility Analysis**

45. Pursuant to the Regulatory Flexibility Act (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and actions considered in this Notice of Proposed Rulemaking. The text of the IRFA is set forth above. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for



comment on the Notice of Proposed Rulemaking. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

### **C. Paperwork Reduction Act**

46. This document may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

### **D. Contact Person**

47. For further information about this proceeding, please contact E. Alex Espinoza, FCC Wireline Competition Bureau, Competition Policy Division, Room 5-C211, 445 12th Street, S.W., Washington, D.C. 20554, at (202) 418-0849 or [Alex.Espinoza@fcc.gov](mailto:Alex.Espinoza@fcc.gov).

## **III. ORDERING CLAUSES**

1. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 201(b), and 251(e) of the Communication Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201(b), and 251(e)(1) that this Notice of Proposed Rulemaking IS ADOPTED.

2. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this

Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Numbering.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

## **Proposed Rules**

For the reasons set forth in the preamble, the Federal Communications Commission proposes to amend part 52 of title 47 of the Code of Federal Regulations as follows:

### **PART 52 – NUMBERING**

1. The authority citation for part 52 is revised to read as follows:

Authority: Authority: 47 U.S.C. 151-55, 201-05, 207-09, 218, 225-27, 251-52, 271, 332 unless otherwise noted.

#### **Subpart D—Toll Free Numbers**

2. Amend § 52.101 by revising paragraph (d) to read as follows:

##### **§ 52.101 General definitions.**

\* \* \* \* \*

(d) Service Management System Database (“SMS Database”). The administrative database system for toll free numbers. The Service Management System is a computer system that enables Responsible Organizations to enter and amend the data about toll free numbers within their control, including whether a toll free number has been text-enabled. The Service Management System shares this information with the Service Control Points. The entire system is the SMS Database.

\* \* \* \* \*

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